

Opinion No. 247.**Wholesaler—Dealer's License—Licenses—Wholesaler, Defined—Retailer, Defined.**

HELD: A trucker who buys a stack of hay from a rancher, bales the hay, and then hauls it and sells the baled hay to a consumer, is not a wholesaler and is not subject to the wholesale dealer's license.

February 7, 1936.

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You have requested an opinion as to what persons in their business dealings come within the provisions of the Montana Wholesale Dealers License Act, which is Chapter 164 of the 1933 Session Laws, as amended by

Chapter 173 of the 1935 Session Laws.

The facts upon which this opinion is written are as follows: A trucker goes to the Gallatin Valley and buys a stack of hay from a rancher. Then the trucker bales the hay and hauls it to Butte and sells it to dairies for feeding purposes; in other words, he sells the hay direct to the consumer.

Your question is: Does that person come within the provisions of the above named act?

It is my opinion that he does not. Section 1 of Chapter 164, above, defines a wholesaler as: "Any person who shall buy to sell at wholesale, or contract to buy to sell at wholesale, or who shall handle at wholesale for the purpose of resale, or who shall handle at wholesale on account of, or as agent for another any produce as herein defined * * *." The same section contains this provision: "Provided further that the provisions of this Act shall not apply to dealers at retail." It will be remembered that this Act covers all natural products of the farm, and consequently takes in transactions in hay, provided such transactions are of a wholesale nature.

In order to properly answer your question it seems to be necessary to clearly distinguish between a wholesaler and a retailer. The definitions are numerous and not at all at variance. I deem it sufficient, therefore, to cite only a few.

Retailer, defined: "One who deals in merchandise by selling it in smaller quantities than he buys—generally with a view to profit." U. S. v. Mickle, 1 Cra. C. C. 268; 26 Fed. Cas. No. 15, 763. "One who sells goods by small quantities or parcels; one who sells to the consumer." Great Atlantic Etc. Tea Co. v. Cream of Wheat Co., 227 Fed. 46; 141 CCA, 594, 595. "One who sells directly to the consumer." In re Metz Bros. Brewing Company, 88 Neb. 164, 167; 129 N. W. 443; 32 L. R. A. (N. S.) 622.

Wholesaler, defined. "To sell by wholesale is to sell by large parcels, generally in original packages and not by retail." Bouvier's Law Dictionary, Vol. 3, p. 3454. "One who deals with the trade who buy to sell again; one who sells, by the nature of his business, in gross, and not by

small quantities or parcels, to the consumers; one who sells to dealers for resale; one who sells to purchasers of packages or quantities for the purpose of trade or being resold." C. J. Vol. 68, p. 260, and cases cited. "One who buys in comparatively large quantities and who sells usually in smaller quantities, but never to the ultimate consumer of individual unit—he sells either to a jobber or to a retailer." C. J. Vol. 68, p. 261 and cases cited. "One who sells in bulk to another who intends to revend the articles purchased." C. J. Vol. 68, p. 261 and cases. Wholesale: "A sale by a merchant to a retailer." Cyc. Vol. 40, p. 929. Wholesale Dealer: "One who deals with the trade who buy it to sell again." Cyc. Vol. 40, p. 929.

From all of the foregoing, I conclude that the man in question is not a wholesaler, and, therefore, not subject to the wholesale dealer's license of this state, but that he is simply a retailer, as long as he sells the hay directly to the consumer and not to the trade who buy to sell again.

Note: See Opinion No. 23, this volume.